

3. The BOE respectfully asserts that the EAB-Panel A erred in failing to render a *Decision and Order* finding the 10-P and 10-G campaign finance disclosure reports have not been filed; and, therefore, are more than 6 days and 11 days late, respectively.³

1. *Affirmed Late Fee Orders*

In paragraphs XIV and XV of its *Request for Hearing*, the BOE raised its issuance of *Late Fee Assessment Orders* as part of its allegations of fact. The assessment of those penalties (late fees) are prerequisites to the assessment of *additional* penalties under La. R.S. 18:1505.4(A)(4)(b). The BOE correctly asserts that Chris C. Smith could have appealed those assessment orders to the EAB under La. R.S. 18:1551.4.1(C)(1), but he failed to do so. The assessment orders were before the EAB as factual components of the case; they did not need to be “affirmed.” While the affirming of those penalty assessments is inconsequential—it did not affect the amount or enforceability of the BOE’s penalty assessments—as a technical matter, the EAB should not have affirmed those penalty assessments. Upon reconsideration, the *Decision and Order* will be amended and revised to remove the parts of the *Conclusions of Law and Order* affirming the penalty assessments.

2. *Assessment of Additional Penalties*

The central issue under this assignment of error is whether the BOE or the EAB has the authority to determine the amount of the additional penalties under La. R.S. 18:1505.4(A)(4)(a) and La. R.S. 18:1505(A)(4)(b) when a candidate files a 10-P report more than six days late or a 10-G report more than eleven days late. The BOE interprets these statutes as providing it the authority to determine and impose the amounts of the penalties, up to the statutory maximum of ten thousand dollars.⁴ The relevant text of La. R.S. 18:1505 follows:

(4)(a) For reports required by this Chapter which are required to be filed between the time a candidate qualifies and election day, in addition to any penalties which

³ *Memorandum*, page 4 of 9.

⁴ *See Memorandum*, page 6 of 9.

may be imposed under this Section or any other law, the supervisory committee may impose on any person required to file such a report who has not filed such report by the sixth day after the report is due, **after an adjudicatory hearing by an adjudicatory panel of the Ethics Adjudicatory Board conducted in accordance with the provisions of the Code of Governmental Ethics**, with notice to the party who is the subject of the hearing, an additional civil penalty not to exceed ten thousand dollars.

(b) For all other reports required by this Chapter, in addition to any penalties which may be imposed by this Section or any other law, the supervisory committee may impose on any person required to file such a report who has not filed such report by the eleventh day after the report is due, **after an adjudicatory hearing by an adjudicatory panel of the Ethics Adjudicatory Board conducted in accordance with the provisions of the Code of Governmental Ethics**, with notice to the party who is the subject of the hearing, an additional civil penalty not to exceed ten thousand dollars. (Emphasis added.)

The BOE's interpretation assigns a narrow purpose to the hearing and role of the EAB:

The EAB **only** has the authority to make the determination if the subject report was filed more than six days late (La. R.S. 18: 1505.4A(4)(a)) or eleven days late (La. R.S. 18:1505.4A(4)(b)). Again, the EAB is not granted authority or jurisdiction to impose these additional penalties. (Emphasis original.)⁵

Under the BOE interpretation, the statute envisions the involvement of two state agencies, the BOE and the EAB, and (potentially) a respondent in an adjudication that would amount to little more than evidentiary “day counting.” More significantly, the BOE reads this statute in isolation and fails to consider the related statute, La. R.S. 42:1141.5, which falls among the implicated “provisions of the Code of Governmental Ethics” and defines the role of the EAB in this adjudication:

B. After the hearing, the adjudicatory panel shall determine whether a violation of any provision of law within the jurisdiction of the Board of Ethics has occurred. **If the adjudicatory panel determines that a violation has occurred, it shall determine what authorized penalties or other sanctions, if any, should be imposed and shall issue a final decision.** (Emphasis added.)

Reading the two statutes on this issue—La. R.S. 18:1505 and La. R.S. 42:1141.5—in *pari*

⁵ *Id.*

materia, the more reasonable interpretation extends the authority to the EAB to determine the amount of the additional penalties. Otherwise, as noted above, the role of the EAB in the adjudication would be ministerial and so limited as to render the process largely meaningless.

Consistent with its interpretation of La. R.S. 18:1505.4(A)(4)(a) and La. R.S. 18:1505(A)(4)(b), the BOE had a limited prayer in its original *Request for Hearing*:

WHEREFORE, the Louisiana Board of Ethics requests that the Ethics Adjudicatory Board schedule and conduct a hearing to determine if Chris C. Smith filed the 10-P campaign finance disclosure report over 6 days late, and the 10-G campaign finance disclosure report over 11 days late, which would subject Chris C. Smith to additional penalties up to \$10,000 for each report as provided for in La. R.S. 18:1505.4(A)(4)(a) and (b).

A party to an adjudication cannot limit the statutory scope of a hearing by drafting a narrow prayer for relief. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised by the pleading.⁶ To the extent the BOE did not expressly raise the issues or request that the EAB assess the additional penalties, the issues were properly before and adjudicated by the EAB.

The BOE also takes the position that only it is statutorily authorized to waive any penalties. La. R.S. 1511.4.1 is the statute upon which the BOE relies to support this position; it appears in relevant part as follows:

B. The supervisory committee may waive all or part of any civil penalties assessed pursuant to Subsection A of this Section. A request for waiver of such penalties shall be made in writing to the supervisory committee, which shall promulgate rules governing the procedure to request a waiver. The supervisory committee may take into consideration the provisions of R.S. 18:1511.5(B) in its consideration of the request for waiver of civil penalties. **The final disposition of a waiver request shall not be appealable to the Ethics Adjudicatory Board or a panel thereof.**

This waiver provision contemplates the fixed statutory penalties, like the ones the BOE assessed

⁶ La. Code Civ. P. art. 1154.

against Chris C. Smith under La. R.S. 18:1505.4(A)(2)(a)(iii), rather than the *additional penalties* at issue in this matter. As noted under the first assignment of error, Chris C. Smith could have appealed those assessment orders to the EAB under La. R.S. 18:1551.4.1(C)(1). Had he done so, it would have then been the role of the EAB to determine the associated penalty amounts under another part of the same statute the BOE is relying on, La. R.S. 18:1511.4.1(C)(2):

(2) If a final order is appealed pursuant to Paragraph (1) of this Subsection, **an adjudicatory panel of the Ethics Adjudicatory Board shall determine the penalties, if any, that should be imposed** in accordance with this Chapter, and shall issue a final decision. The final decision may be appealed as provided in R.S. 42:1142. (Emphasis added.)

It stands to reason that the entity authorized to determine what penalties are warranted, *if any*, has the discretion to waive penalties or, as was done in this matter, make the waiver contingent upon the filing of the outstanding reports.

It is assumed that it was this aspect of the *Decision and Order* about which the BOE objected to the application of the Rule of Lenity by the EAB. The BOE raised this issue in its *Request*, but it did not discuss it in its *Memorandum*. The BOE provided no legal support for this position and, consequently, has shown no related legal error.

The BOE's second assignment of error does not show that the related parts of the *Decision and Order* were contrary to law. The request for reconsideration on this issue is denied.

3. No Finding of Late Filings

The third assignment of error by the BOE appears to be so closely related to the second assignment that it might not warrant additional discussion. Standing alone, it fails on its own merits. Contrary to the BOE's assertion, the original *Decision and Order* did find that the "10-P and 10-G finance disclosure reports have not been filed."⁷ It would have been legal error to assess

⁷ BOE third assignment of error.

the additional penalties without those findings.

The *Findings of Fact* in the *Decision and Order* found, in relevant parts, that the 10-P report was due October 29, 2018, the 10-G report was due November 28, 2018, and that, as of the date of the March 13, 2020, hearing, Chris C. Smith had not filed the 10-P or 10-G reports. Obviously, periods of time exceeding fifteen months are “more than six days and eleven days late.”

In relation to this assignment of error, the BOE argues that “it is entitled to an *Order* finding that the 10-P campaign finance report is more than six days late and the 10-G campaign finance report is more than eleven days late.”⁸ This argument is inseparable from the BOE’s interpretation of the statutes contained in its second assignment of error. For the reasons discussed relative to the second assignment, the third assignment also lacks merit. The request for reconsideration on this issue is denied.

⁸ *Memorandum*, p. 8 of 9.

ORDER

IT IS ORDERED that the *Request for Rehearing and Reconsideration* by the Louisiana Board of Ethics is **granted**, as it applies to the Ethics Adjudicatory Board's affirming the penalties against Chris C. Smith for violating La. R.S. 18:1491.4(B)(4) and La. R.S. 18:1491.4(B)(5), **and** the May 1, 2020, *Decision and Order* is **hereby amended to remove** the section titled "Fixed Statutory Penalties" and the following parts of the *Order*:

IT IS ORDERED that the assessment by the Board of Ethics of a penalty of \$1,000 against Chris C. Smith for violating La. R.S. 18:1491.4(B)(4) is **affirmed**;

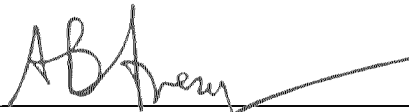
IT IS ORDERED that the assessment by the Board of Ethics of a penalty of \$1,000 against Chris C. Smith for violating La. R.S. 18:1491.4(B)(5) is **affirmed**.

IT IS ORDERED that the remaining parts of the *Request for Rehearing and Reconsideration* by the Louisiana Board of Ethics are **denied**.

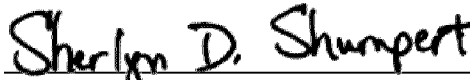
Rendered and signed August 10, 2020, in Baton Rouge, Louisiana.



Lance B. Vinson
Presiding Administrative Law Judge



A. Brock Avery
Administrative Law Judge



Sherlyn Shumpert
Administrative Law Judge

NOTICE OF TRANSMISSION OF DECISION OR ORDER

I certify that on Tuesday, August 11, 2020, I have sent a copy of this decision/order to all parties of this matter.

Clerk of Court
Division of Administrative Law

REVIEW RIGHTS

This decision on rehearing and reconsideration exhausts your administrative remedies. Judicial review of this order (and the related underlying decision) is subject to procedures and time limits under La. R.S. 42:1142.